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SUBJECT: Taiwan IPR: Taiwan to Target Indirect Patent Infringement

Reftel: Taipei 580

Summary

¶1. (SBU) The Taiwan Intellectual Property Office (TIPO) recently announced preliminary plans to amend the Patent Law to protect against indirect patent infringement. The changes would allow patent-holders to bring suit against upstream and middle-stream component suppliers who abet downstream production of counterfeit goods if those goods are sold in Taiwan. Taiwan's powerful IT industry is wary of costs and legal hassles the proposed changes could create, and TIPO says the proposal is far from final. End summary.

¶2. (U) On July 19, Wang Mei-hua, Director General of the Taiwan Intellectual Property Office (TIPO), announced that TIPO intends to amend Article 100 of the Patent Law to allow prosecution of companies and individuals for indirect patent infringement. The proposed amendment would allow a patent holder to bring suit against a Taiwan component or parts company that knowingly supplied legitimate components used to manufacture infringing goods sold in Taiwan.

¶3. (SBU) On June 20, TIPO Patent Office Specialist Wu Shin-lin told us TIPO is following the example of countries such as Japan, Germany, U.K., and the U.S., each of which has laws targeting indirect patent infringement. Wu said TIPO will draft the revised law to protect companies that hold the patent on a component eventually used in a downstream counterfeit product sold in Taiwan, as well as companies whose products are used without the Taiwan company's knowledge and permission. Wu emphasized TIPO will seek broad input from the public and industry before finalizing the proposed amendments. He said MOEA plans to submit the final Patent Law amendment draft to the Executive Yuan in September or October.

TIPO DG: Media Overstates Proposal's Effect

¶4. (SBU) On July 21, Director General Wang told AIT that, contrary to media reports, an amendment would not offer patent-holders a significant increase in protection, since plaintiffs would have to show direct patent infringement took place in Taiwan before being able to win an indirect infringement case. Although media reports implied TIPO's aim is to punish Taiwan companies supplying components for PRC-made counterfeit electronics, often called "shanzhaiji," Wang told us because Taiwan does not allow the sale of such PRC-made knock-offs, proving direct patent infringement took place in Taiwan will be difficult in most cases. [Note: shanzhaiji ("mountaintop fortress machines") are PRC-made IT goods such as cell phones and laptops that copy the appearance of popular brands, but

sell for far less because some or all of their components are unlicensed or pirated. Because Taiwan is the world's biggest producer of 15 IT products, including 99 percent of the world's motherboards and 76 percent of LCD monitors and screens (reftel), Taiwan companies operating in Taiwan or the PRC produce a disproportionate amount of the components that go into shanzhaiji. End note.]

Producers: Law Would be Burdensome, Costly

15. (SBU) Despite Wang's assurances, Taiwan's IT component producers fear the proposed law could burden companies with unnecessary costs and legal hassles. On July 21, Su wen-tang, Taiwan Semiconductor Manufacturing Company (TSMC) Advanced Technology Department Director, told us the proposed amendment would not likely ensnare many Taiwan companies, because it will be difficult in most cases to prove that direct infringement took place in Taiwan, and that a company knew its components would be used in an infringing product. However, Su worries the law would force Taiwan companies to devote extra time and resources to investigating downstream distributors and producers, as well as to defending themselves against spurious lawsuits.

16. (SBU) W. F. Hsu, Legal Affairs Director for MediaTek Incorporated, echoed Su's concerns. Hsu thinks Taiwan ought to eventually adopt the concept of indirect patent infringement in order to harmonize the island's legal code with those of its advanced trading partners. However, Hsu opposes doing so now because Taiwan's still-evolving legal infrastructure for intellectual property rights is simply "not good enough" to handle fairly and efficiently complex indirect infringement cases.

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Comment

17. (SBU) The proposed amendments could help U.S. companies such as Apple by choking off or increasing the cost of Taiwan-made parts for products such as counterfeit iPhones. The changes would also give foreign companies another legal weapon to enforce their IPR in Taiwan. However, given the proposed law's limited scope and industry's wariness about the proposal, the final law will likely not be as comprehensive as initial media reports suggest. End comment.

WANG